IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1569 OF 2006

Bhuraram s/o.Dargaji Chaudhary
and others. ... Appellants.

Versus.

Mahedrakumar Jagdishprasad
Agarwal and others. ... Respondents.

Shri A.J.Mohanrao with Shri Ashok Verma and Shri Niyaz Ahmed for the Appellants.

Shri N.V.Mhatre for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 26th July, 2006.

P.C.:

1. Leave to amend the memorandum of appeal granted.

2. Admit. The learned Advocate appearing for Respondent No.1 waives service. Considering the controversy involved in the Appeal, service of notice to the Respondents Nos.2 to 5 is dispensed with. Heard the learned Advocates appearing for the parties.

3. The challenge in this Appeal is to the common Judgment and Order dated 20th June 2006 passed by the learned Judge of the City Civil Court in four Chamber Summonses. Three Chamber Summonses were taken out by

the Appellants herein and the fourth one was taken out by the Respondent No.1. All the Chamber Summonses were taken out in execution of the decree passed in favour of the 1st Respondent in a suit filed by him. The decree is for possession of the immoveable property and for mesne profits. In the Chamber Summons taken out by the Appellants the contention raised by them is that they are in possession of the property subject matter of the decree and they are not bound by the decree. The Chamber Summons taken out by the 1st Respondent/original Plaintiff is under the provisions of Order XXI Rule 97 of the Code of Civil Procedure, 1908 for removal of obstruction of the Appellants.

4. At this stage an affidavit filed by the Appellants is taken on record. In the Memorandum of Appeal ground No.xi is incorporated to the effect that the learned Judge of the trial Court was not well conversant with the Civil law and consequently he has committed an error by passing the impugned order. The Appellants have tendered an unconditional apology and has sought permission to delete the ground. The learned Advocate who has drafted the Memorandum of Appeal has also tendered apology. The apology deserves to be accepted. The Appellants are directed to delete ground No.xi from the memorandum of appeal by making necessary amendment within a period of two weeks from today.

Considering the attitude adopted by the Appellants, mere acceptance of the apology will not be sufficient. They must be ordered to pay costs. Considering the facts of the case, the Appellants are directed to pay a donation of Rs.7500/- to the Maharashtra State Legal Services Authority within a period of four weeks from today.

5. The learned Counsel appearing for the Appellants submitted that the Appellants are not bound by the decree passed in favour of the Respondent No.1 and they have independent right, title and interest in respect of the suit property. He submitted that the learned trial Judge did not frame issues and did not allow the parties to lead oral evidence.

6. The learned Counsel appearing for the Respondent No.1 did not dispute that the issues were not framed by the learned trial Judge. He, however, submitted that the Appellants never made any attempt to lead evidence. He submitted that the Appellants have not produced any document to show any right in respect of the suit property and therefore, no case is made out by the Appellants.

7. I have considered the submissions. The Chamber Summons taken out by the Respondent No.1 was specifically under the provisions of Rule 97 of Order

XXI of the said Code for removal of resistence/ obstruction by the Appellants. Rule 101 provides that all questions including the question relating to right, title and interest in respect of the property arising between the parties to the proceedings on an application under Rule 97 or Rule 99 or their representatives and relevant to the adjudication of the application shall be determined by the Court dealing with the Application and not by a separate suit and for that purpose the Court shall notwithstanding anything to the contrary contained in any other law for the time being in force deemed to have jurisdiction to decide such questions. The order which is passed after such adjudication is to be treated as a decree under Rule 103 of Order XXI of the said Code. Even on the Chamber Summons taken out by the Appellants, the learned trial Judge was under an obligation to adjudicate upon the rights of the Appellants as held by the Apex Court in a decision reported in AIR 1997 Supreme Court, page 856 (Brahmdeo Chaudhary v/s. Rishikesh Prasad Jaiswal and another).

8. Considering the scope of the adjudication, the learned trial Judge ought to have permitted the parties to lead oral and documentary evidence. It is true that even the Appellants did not apply for permission to lead evidence. However, it was the duty of the learned trial Judge to fix the matter for the parties to lead

evidence. Instead of doing so, he allowed the original documents to be tendered on record by the parties during the course of arguments. Such a course is not permissible as the order which is made on adjudication has a force of a decree. In a proceeding like this, the parties must permitted to lead oral and documentary evidence and thereafter adjudication is required to be made by the trial Court. Thus the only course which is left open is to remand the Chamber Summons to the learned trial Judge for adjudication in accordance with the law. However, the proceedings will have to be completed in a time bound programme as the decree in favour of the 1st Respondent has been passed in the year 2002.

9. Hence the following order is passed:

i) The impugned Judgment and order is quashed and set aside the the Chamber Summons Nos.548 of 2003, 549 of 2003, 550 of 2003 and 551 of 2003 are restored to file of the learned trial Judge. The parties will appear before the learned trial Judge on 14th August 2006 at 11.00 a.m. The Appellants will keep the affidavits of evidence of their witnesses ready and will tender the same before the trial Court on 14th August 2006. The trial Court will not grant any further time

on 14th August 2006. The Appellants to file the documents on which they are relying upon before the trial Court on 14th August 2006. The First Respondent will be also entitled to lead evidence.

ii) The learned trial Judge will permit the parties to cross-examine the witnesses examined by the rival parties and will decide the Chamber Summonses as expeditiously as possible and in any event on or before 31st December 2006.

iii) It is made clear that the Appellants will not be entitled to seek adjournment on any ground unless there are extra ordinary circumstances warranting grant of adjournment.

iv) The Appellants shall pay a sum of Rs.7500/- by way of donation to Maharashtra State Legal Services Authority within a period of four weeks from today. Xerox copy of the receipt issued by Maharashtra State Legal Services Authority will be filed on record of this Court within a period of four weeks.

Judge.